

STARN · O'TOOLE · MARCUS & FISHER

A LAW CORPORATION

December 8, 2021

VIA ELECTRONIC MAIL

Honolulu Liquor Commission
711 Kapiolani Boulevard, Suite 600
Honolulu, Hawaii 96813
c/o: Anna Hirai
Email: ahirai@honolulu.gov

RECEIVED
LIQUOR COMMISSION
O&C OF HONOLULU
2021 DEC -8 PM 12:32

***Re: App No. 21-22976 Transfer Application for 2375 Ala Wai Property LLC
dba Waikiki Sand Villa Hotel, (Hotel General) License No. L0035:
Response to Supplemental Licensing Investigative Report***

Dear Commissioners:

As you know, this firm is the Authorized Agent for 2375 Ala Wai Property LLC (the “**Applicant**” or the “**Owner**”), which has applied for the transfer of Liquor License No. L0035 (the “**License**”) for the Waikiki Sand Villa Hotel (the “**Hotel**”) in connection with the sale of the Hotel from Waikiki Sand Villa Hotel, Inc.¹ (the “**Seller**”) to the Applicant.

The Honolulu Liquor Commission (the “**Commission**”) staff prepared a Licensing Investigative Report dated November 12, 2021 (the “**Report**”). We responded to the Report with a letter dated November 15, 2021 (the “**Response Letter**”), the contents of which were further discussed during the hearing that was held before the Commission on November 18, 2021.

After that hearing, the Commission staff prepared a Supplemental Licensing Investigative Report dated December 7, 2021 (the “**Supplemental Report**”). The Supplemental Report stated that “statutory requirements have not been met” and that “[t]he transfer of business took place prior to Commission approval[.]” (Supplemental Report, p. 5).

We strongly, but respectfully, disagree with these statements. In anticipation of the public hearing before the Commission on December 9, 2021, this letter will address the concerns raised in the Supplemental Report and demonstrate that a transfer of the License to the Applicant is appropriate in this situation.

¹ Waikiki Sand Villa Hotel, Inc. changed its corporate name in connection with the sale of the Hotel and is now known as Sakuradai Hotel Corporation.

I. THE APPLICANT IS THE OWNER OF THE HOTEL.

As discussed in more detail in Part II of the Response Letter, the Applicant purchased the Hotel on March 23, 2021 and is the current owner of the Hotel. Therefore, the Applicant is the correct entity to hold the License for the Hotel, and the Applicant correctly applied for the transfer of the License from the Seller to the Applicant.

However, the Supplemental Report stated that: “[b]ased on the purchase and sales agreements, bill of sales, amendments, and information obtained from the websites, it appeared that the applicant was a party to another entity (Dovetail + Co.) and may not have had exclusive possession and control as the applicant.” Respectfully, this is incorrect.

As described in Part II of the Response Letter, Dovetail Group LLC (dba Dovetail + Co.) (“*Dovetail*”) is an affiliate of the Applicant. Dovetail’s affiliate, along with several other entities,² created the Applicant as a joint venture entity in order to facilitate the financing for the purchase of the Hotel. The ownership and management structure of the Applicant’s sole member, 2375 Ala Wai Holding LLC (“*Holding Co.*”), was described in the original transfer application along with a list of its principals (*i.e.*, its member and managers).

As noted on page 5 of the Supplemental Report, we explained during the November 18, 2021 hearing that the various references to Dovetail being the owner of the Hotel on the Hotel’s website and on Dovetail’s website were typos. On November 19, 2021, we sent an email to the Commission stating that the typos on the websites had been corrected.

The references to Dovetail being the owner of the Hotel in various news stories are due to the colloquial manner in which business reporters sometimes report hotel acquisitions. The fact that these news stories did not refer to the correct entity (2375 Ala Wai Property LLC) as the purchaser of the Hotel does not change the fact that the Applicant is the current owner of the Hotel and the correct applicant for the transfer of the License.

II. THE COMMISSION APPROVED A SERVICES AGREEMENT BETWEEN THE SELLER AND THE APPLICANT PRIOR TO THE DATE ON WHICH THE APPLICANT ACQUIRED THE HOTEL.

On March 16, 2021, the Applicant submitted to the Commission for review and approval: (i) a Form LIQ-LIC-156; and (ii) a Services Agreement between the Seller and the Applicant. (*See*

² The members of Holding Co. are: (i) Macquarie Waikiki Holding LLC (an affiliate of the Applicant’s lender who financed the acquisition of the Hotel); (ii) 2375 Ala Wai Dovetail Investor LLC (an affiliate of Dovetail of which Dovetail is the operating manager); and (iii) 2375 Ala Wai Promote LLC.

Dovetail, as the operating manager of 2375 Ala Wai Dovetail Investor LLC, indirectly has general authority to carry out the day-to-day operations of the Hotel, subject to certain rights of the other members of Holding Co. Dovetail’s indirect ownership and management of Holding Co. and the Applicant is likely the reason why various news stories reported that Dovetail acquired the Hotel, despite the fact that the Applicant actually acquired the Hotel.

Exhibit A-1 attached to this letter). The Services Agreement provides for the Seller to retain the License and for the Applicant to operate the Hotel under the License until such time as the transfer of the License is approved. On March 18, 2021, the Commission approved the Services Agreement. (See **Exhibit A-2** attached to this letter).

Therefore, as noted in Part II of the Response Letter, the Services Agreement between the Seller and the Applicant was approved *prior to* the date on which the Seller transferred the Hotel to the Applicant (March 23, 2021), and the transfer of the business did not take place prior to Commission approval.

III. THE MANAGEMENT SERVICES AGREEMENT FOR THE HOTEL DOES NOT CONSTITUTE A “TRANSFER” OF THE BUSINESS OR THE LICENSE.

The Owner, as the owner of the Hotel, entered into a Management Services Agreement (the “*MSA*”) dated March 1, 2021, with OLS Hotels & Resorts, LLC, dba Springboard Hospitality (the “*Operator*”). A copy of the MSA has previously been provided to the Commission.

The Response Letter referred to numerous provisions in the MSA demonstrating that the Operator has never had “exclusive possession or control” of the business of the Hotel. The Operator serves at the pleasure of the Owner and only in the capacity of managing agent on behalf of the Owner, and the Operator’s rights and responsibilities with respect to the Hotel are *expressly limited* by the terms of the MSA. Nonetheless, the Supplemental Report concludes that certain statements from the MSA “indicate that the applicant [sic] will not be operated by the applicant with any respect to the hotel’s business.” Respectfully, we disagree with this conclusion.

Page 3 of the Supplemental Report correctly noted that Section 1.1 of the MSA appoints the Operator as the “sole and exclusive operator of the Hotel during the Operating Term and on the terms set forth [in the MSA].” However, the Operator’s rights and authority to operate the Hotel on behalf of the Owner are *subject to* the Owner’s consent and approval rights, authority, and responsibilities under the MSA, which are summarized in **Exhibit B** attached to this letter. Therefore, at no time has the Operator had “exclusive possession or control” of the Hotel or the business of the Hotel.

The Supplemental Report noted in two places on pages 3 and 4 that Section 1.2 of the MSA provides, in relevant part, that:

the parties acknowledge and agree that *as of the date of this Agreement*, Owner has no interest in the Property other than as a party to an agreement to purchase the Property from its current owner, subject to the terms and conditions of such agreement. *Accordingly, the Operating Term of this Agreement shall not commence unless and until Owner purchases the Hotel pursuant to such agreement.*

(Emphases added).

The foregoing statement was true when the Owner and the Operator signed the MSA as of the effective date of the MSA (March 1, 2021). The MSA was executed prior to the closing of the Owner's purchase of the Hotel from the Seller (the "current owner" referenced in the foregoing statement) so that the MSA would be in place and effective upon the closing. However, once the closing occurred and Owner acquired the Hotel on March 23, 2021, this statement ceased to be accurate, because the Owner's interest in the Hotel became that of the fee owner of the Hotel.

Once the Owner acquired the Hotel, the Operating Term of the MSA commenced, just as the parties to the MSA intended. The fact that the foregoing statement was included in the MSA to describe the relationship of the Owner to the Hotel as of March 1, 2021 has no bearing on whether the Owner is the owner of the Hotel now.

As noted on Page 4 of the Supplemental Report, Section 4.2 of the MSA provides:

Subject to the limitations on Operator's authority set forth herein, where advertising or sales promotion for the Hotel is supplied in conjunction with other hotels or similar properties Operator may own or operate, ***costs charged to the Hotel shall be prorated among the Hotel and other hotels benefited thereby*** according to the percentage of total gross annual revenues of all benefited hotels, and ***such expenditures shall be in accordance with the Annual Budget***.

(Emphases added). The Operator's ability to provide advertising or sales promotion for the Hotel in conjunction with other hotels or similar properties owned or operated by the Operator does not indicate that the Operator has "exclusive possession or control" of the Hotel or the business of the Hotel.

Furthermore, the foregoing rights of the Operator are expressly limited by a requirement that any such expenditures for advertising or sales promotion that are prorated to the Hotel "shall be in accordance with the Annual Budget." Per Section 3.1.J(5) of the MSA, the Annual Budget is comprised of the Operating Budget and the Capital Budget, both of which are subject to the Owner's final approval per Sections 3.1.J.(1), (2), and (4) of the MSA. Per Section 2.7 of the MSA, the Owner's prior written consent is required for any Operating Expenses that are not set forth in the Annual Budget.

As noted on Page 4 of the Supplemental Report, Section 14.3 of the MSA provides:

Operator acknowledges that as between Owner and Operator, Owner and its Affiliates own all trade names (including, without limitation, the name "Wayfinder"), trademarks, service marks, copyrights, symbols, logos and designs in connection with the Hotel and all slogans, derivations, trade secrets, know-how and trade dress and all other proprietary and intellectual property rights associated therewith (collectively, the "**Owner's IP**"), and Owner shall retain all rights to the same; provided, however, that during the Term, Operator shall have the right to utilize the same, without payment of any fee or royalty, in connection with the

operation and management of the Hotel under the terms and conditions of this Agreement, provided further that such Owner's IP shall only be used by Operator for and in connection with the Hotel.

Page 4 of the Supplemental Report also stated: "On the hotel's website, the Dovetail Co. logo appears at the bottom of the page, which as mentioned by Exhibit B, appeared to be the owner."

The "Owner's IP" described in Section 14.3 of the MSA refers to intellectual property owner by the Owner and its affiliates. The current logo for the Hotel is the "Waikiki Sand Villa Hotel" logo that appears at the top of the Hotel's website.³ (See Exhibit B to the Supplemental Report). The fact that the logos for the Operator and Dovetail also appear at the bottom of the website for the Hotel does not indicate that either the Operator or Dovetail owns the Hotel.

The intent of Section 14.3 of the MSA was to clarify that, as between the Owner and the Operator, the Owner owns all intellectual property used in connection with the Hotel, but that the Operator has the right to use such intellectual property in connection with the operation and management of the Hotel, and subject to the terms and conditions of the MSA. This allocation of ownership rights further emphasizes the fact that the Owner, and not the Operator, is the correct applicant for the transfer of the License for the Hotel.

The additional provisions from the MSA that are discussed in the Supplemental Report do not support the conclusion the Hotel "will not be operated by the applicant with any respect to the hotel's business." The Operator has never come into "exclusive possession or control" of the business of the Hotel, and under the terms of the MSA, it would not be possible for the Operator to do so.

While the MSA delegates some of the responsibility for operating the Hotel to the Operator, it also expressly reserves key rights and decision-making authority relating to the operation and control of the Hotel to the Owner. Furthermore, under Section 10.2 of the MSA, the Owner has the right to terminate the MSA at any time at the Owner's convenience (i.e., for any reason or no reason), so the Owner may dismiss and replace the Operator of the Hotel at the Owner's discretion. Thus, the business of the Hotel is ultimately controlled by the Owner, not the Operator, and the Owner is the proper entity to hold the License pursuant to HRS Chapter 281.

IV. THE APPLICANT MEETS STATORY REQUIREMENTS.

As is common in the hotel industry, the fee owner has engaged a reputable hotel management company to manage the day-to-day operations under the controls and supervision of the Owner. The Operator lacks sufficient possession and control over the Hotel to hold the liquor license in this circumstance. Given that the Operator may be removed at any time and for any

³ The Owner plans to rebrand the Hotel at some point in the future as the "Wayfinder Waikiki." Any logos, trade names, and other intellectual property associated with the rebranded Hotel will belong to the Owner or the Owner's affiliates.

reason (or no reason at all) by the Owner, the Owner is the appropriate entity to hold the liquor license. Possession and control of the property and business remain with the Applicant. The statutory requirements here are met. This is a customary and legitimate business arrangement.

V. CLOSING REMARKS.

We hope that this supplemental written response has addressed the concerns raised in the Supplemental Report. We respectfully request that the Commission approve the Applicant's transfer application.

Please feel free to contact me at (808) 447-5336 or cohira@starnlaw.com if you have any additional questions or concerns with this transfer application. We would be happy to provide you with further information upon request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christina Ohira", is written over a horizontal line.

Christina N. Ohira, Authorized Agent for
2375 Ala Wai Property LLC

Enclosures.

cc: Daniel Sato, Supervising Investigator
dsato@honolulu.gov

Homer Tamapua, Licensing Investigator
htamapua@honolulu.gov

EXHIBIT A-1

**March 16, 2021 Applicant's Transmittal to Honolulu Liquor Commission
Enclosing Services Agreement for Approval**

STARN • O'TOOLE • MARCUS & FISHER

A LAW CORPORATION

TRANSMITTAL LETTER

To: Anna C. Hirai
Assistant Administrator
Honolulu Liquor Commission
711 Kapiolani Boulevard, Suite 600
Honolulu, Hawaii 96813

Date: March 16, 2021

From: Christina Ohira, Esq.

Re: Waikiki Sand Villa Hotel

VIA HAND DELIVERY

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1 original	3/15/2021	LIQ-LIC-156 Submission of Management or Operating Agreement (with attachment)

TRANSMITTED FOR:

<input type="checkbox"/> Your Information and File	<input checked="" type="checkbox"/> Your Further Necessary Action
<input type="checkbox"/> Your Signature and Return	<input type="checkbox"/> Your Approval
<input type="checkbox"/> Your Signature and Forwarding as Noted Below	<input type="checkbox"/> Your Review and Comment
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> Per Your Request
<input checked="" type="checkbox"/> SEE REMARKS BELOW	

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CALL.

REMARKS:

If you have any questions, please contact me at cohira@starnlaw.com or on my direct line at 447-5336.

Thank you.

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU
 711 KAPIOLANI BOULEVARD, SUITE 600, HONOLULU, HAWAII 96813-5249
 PHONE (808) 768-7300 • EMAIL HLC@honolulu.gov
 INTERNET ADDRESS: www.honolulu.gov/liq

MANAGEMENT OR OPERATING AGREEMENT

Rule 3-82-41.4

☒ New

☐ Revised

☐ Cancelled

Notify the Liquor Commission in writing, of any changes that occur to your Management or Operating Agreement.

License #: L0035

Licensee Name: WAIKIKI SAND VILLA HOTEL, INC.

Trade Name / DBA: WAIKIKI SAND VILLA HOTEL

Licensee Contact Name: HIROKI SHUTO Title: PRESIDENT

Bus. #: 808-294-0845 Mobile #: 808-294-0845 Email: shuto@wsvhotel.com

Name of Manager, Operator or Entity: 2375 ALA WAI PROPERTY LLC

Contact Name: CHRISTINA OHIRA Title: AUTHORIZED AGENT

Bus. #: 808-447-5336 Mobile #: 5808-349-9635 Email: COHIRA@STARNLAW.COM

☒ Attached Management or Operating Agreement

Rule §3-82-41.4(b)

- (1) The agreement is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain in possession and control of the licensed premises.
- (2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.
- (3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

☐ Attached Management or Operating Agreement

If Liquor License will be transferred to new ownership, provide expected date of transfer of the license to the new Manager, Operator or Entity:

Expected Date of Transfer

(Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license)

By signing below, I hereby agree and certify all statements above to be true and correct:


 SIGNATURE Licensee (Owner)

3/15/2021

DATE

HIROKI SHUTO

PRINT Licensee (Owner)

PRESIDENT

TITLE

For HLC Office Use Only

HLC STAFF Initial: _____

☐ Accepted ☐ Denied

LCIS ENTRY Date: _____

SERVICES AGREEMENT

This Services Agreement (this "**Agreement**") is made effective as of March 23, 2021 (the "**Effective Date**"), by and between WAIKIKI SAND VILLA HOTEL, INC., a Hawaii corporation (hereafter referred to as "**Licensee**") and 2375 ALA WAI PROPERTY LLC, a Delaware limited liability company (hereafter referred to as "**Manager**").

W I T N E S S E T H:

Commencing on March 23, 2021 (the "**Closing Date**"), Manager will be the owner of that certain property located at 2375 Ala Wai Boulevard, Honolulu, Hawaii, 96815 commonly known as "Waikiki Sand Villa Hotel" (the "**Premises**").

Licensee is the liquor license holder for the Premises, and has the right to sell liquor at said Premises pursuant to Liquor License No. L0035 (the "**Liquor License**") issued by the Honolulu Liquor Commission of the City and County of Honolulu (the "**Commission**").

Licensee will change its corporate name to SAKURADAI HOTEL CORPORATION as of the Effective Date or soon thereafter, and will notify the Commission of the change in name.

Manager has applied with the Commission for a temporary liquor license and a transfer of the Liquor License.

The parties desire to enter into this Agreement to allow for the continued liquor operations at the Premises, to the extent allowable under applicable law, but only as a temporary measure until Manager is able to obtain a temporary liquor license.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. Services Under Liquor License; Term.

(a) **Liquor Licensing.** From the Effective Date until the *earlier* to occur of (i) the date Manager picks up the temporary liquor license covering all operations currently covered by the Liquor License, or (ii) three (3) months after the Closing Date (the "**License Service Termination Date**"), Licensee hereby appoints Manager as its agent to have exclusive control and management of the liquor operations at the Premises (the "**Licensed Premises**"), and to keep the Liquor License in good standing to permit the uninterrupted sale and serving of alcoholic beverages at the Licensed Premises, including but not limited to, renewing the Liquor License as may be necessary. In this regard, Manager shall be primarily responsible to cause applicable employees at the Premises and the respective liquor operations under the Liquor License to be in full compliance with all applicable liquor related laws, rules, and regulations. Licensee and Manager agree to cooperate with each other in transferring the Liquor License to Manager. Such cooperation shall include: (1) prompt compliance with all reasonable requests of either party for the execution of documents required in connection with such transfer; (2) compliance with any reasonable request of either party in connection with the issuance of a temporary license to

Manager; (3) promptly providing any and all required state tax clearances for the transfer of the License to Manager; (4) Licensee promptly paying any outstanding fees and fines owed to the Commission arising from circumstances preceding the Closing Date; and (5) if required by the Commission, personal appearance by such officers, directors or employees of Licensee as required by the Commission, provided that, without duplication of other sums payable hereunder, Licensee's reasonable out-of-pocket expenses (excluding any unpaid taxes, fees or fines owed by Licensee or arising due to circumstances prior to the Closing Date) in connection with the foregoing shall be reimbursed by Manager, but Licensee shall receive no fee or other consideration for such transfer of the Liquor License.

(b) Services. The services to be provided by Manager under this Agreement are referred to herein as the "**Services.**" Pursuant to subparagraph (a) above, Licensee is appointing and engaging Manager to operate and manage the liquor services, including, without limitation the furnishing and dispensing of liquor, at the Premises. Licensee will not be actively or directly engaged in the furnishing or dispensing of liquor at the Premises.

(c) Consideration. In consideration of Manager performing the Services, Licensee has agreed to cooperate with Manager and use good faith, commercially reasonable efforts, to transfer the Liquor License to Manager.

(d) Reimbursement of Licensee. For all costs and expenses described herein that Licensee incurs, Licensee shall provide Manager with invoices from time to time (but no more frequently than monthly). No general excise tax will be paid on the cost of reimbursing Licensee for liquor inventory or for costs which are paid by way of offset against revenues from liquor sales. For purposes of this Agreement, "actual cost" shall include, but not be limited to, the following: (1) the cost of purchasing new liquor inventory for sale and payment of Hawaii GET on liquor sales (if not paid for by Manager directly), (2) the Liquor License renewal fee due in June 2021, and (3) any and all other fees and costs including without limitation attorneys' fees and consultant fees that are deemed necessary in Licensee's reasonable discretion to perform its obligations under this Agreement. Manager shall pay all such invoices in full in cash, by wire transfer or by way of cashier's check within ten (10) days following Manager's receipt of monthly invoices for such expenses. Any payments made to Licensee by wire transfer shall be sent per the wiring instructions attached as Exhibit A to this Agreement. All net proceeds, after payment to Licensee for the Services and cost of liquor inventory, will belong to Manager.

2. Security Deposit. There is no security deposit required under this Agreement.

3. Obligations of the Parties.

(a) During the period commencing on the date hereof, through and including the License Service Termination Date, Manager shall use commercially reasonable efforts, or cause its contractors and agents, to comply with all laws, rules and regulations applicable to the Liquor License and the respective liquor operations.

(b) Licensee shall cooperate with Manager to the extent required in order for Manager to perform its obligations under this Agreement. This includes, without limitation, maintaining the Liquor License in active status and good standing, renewal of the License, and all

other acts and obligations associated with being a liquor license holder. The obligations of Licensee hereunder shall survive the expiration of this Agreement until the transfer of the liquor license is approved by the Commission.

(c) All gross revenues from the sale of alcoholic beverages shall be offset against the costs incurred by Manager in performing the Services hereunder, including the cost of purchasing the liquor inventory. After the issuance of the temporary license to Manager and on or before the License Service Termination Date, Manager, on behalf of Licensee, shall, to the extent required by the Commission, return the remaining liquor inventory to the vendors for credit, which credit shall be offset against the costs incurred by Manager in performing the Services hereunder. Any remaining inventory shall be transferred to Manager with a credit to Licensee therefor on the License Service Termination Date.

(d) Licensee and Manager shall promptly notify the other party of any notice of violations or other citations it may receive from the Commission, the Honolulu Police Department, or other law enforcement agency related to any violations occurring in connection with the liquor operations or affecting the Liquor License prior to the License Service Termination Date. To the extent that any citations or notice of violations are issued with respect to the period prior to the Closing Date, Licensee shall be responsible for paying any fines or other penalties assessed by the Commission or any law enforcement agency in connection therewith. Manager shall promptly notify the Licensee of any notice of violations or other citations it may receive from the Commission, the Honolulu Police Department, or other law enforcement agency related to any violations occurring in connection with the liquor operations or affecting the Liquor License during the term of this Agreement. To the extent that any citations or notice of violations are issued with respect to the period during the term of this Agreement or under its Temporary License or after the Liquor License is transferred to Manager, Manager shall be responsible for paying any fines or other penalties assessed by the Commission or any law enforcement agency in connection therewith.

4. **Confidentiality.**

Licensee and Manager will handle and protect from disclosure all proprietary and confidential information disclosed to it by the other party with respect to the Services in the same general manner as they handle and protect its own information that it considers proprietary and confidential.

5. **Points of Contact.**

The following individuals shall serve as the points of contact for all questions and issues relating to the Services:

Licensee: WAIKIKI SAND VILLA HOTEL, INC./SAKURADAI HOTEL
CORPORATION
2375 Ala Wai Blvd.
Honolulu, HI 96815
Attn: Hiroki Shuto

Notices to Licensee with copy to:

Matsubara, Kotake & Tabata
Suite 308, Charles. R. Kendall Bldg.
888 Mililani Street
Honolulu, Hawaii 96813
Attention: Mervyn M. Kotake

Manager: 2375 ALA WAI PROPERTY LLC
10 East 53rd Street, Suite 1805
New York, New York 10022
Attn: Phil Hospod

Notices to Manager with copy to:

Starn O'Toole Marcus & Fisher
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 1900
Honolulu, Hawaii 96813
Attention: Christina N. Ohira

6. Records.

The parties shall provide to each other all information and records reasonably required to maintain full and accurate books relating to the provision of Services and the cost thereof and all other records relevant to this Agreement. Upon reasonable notice from another party, each party shall make available for inspection and copy by such other party's agents such information, books, and records during reasonable business hours.

7. Indemnification: No Consequential Damages; Limitation on Liability; Insurance.

(a) Manager shall defend, indemnify and hold harmless Licensee and its partners, members, shareholders, direct and indirect managers, agents, employees, officers, directors and affiliates (the "**Licensee Indemnified Parties**") from and against any and all claims, actions, costs, damages, liabilities, losses, and expenses of any kind (including, without limitation, reasonable, attorneys' fees, consultant fees and costs) ("**Indemnified Claims**") incurred or suffered by any one or more of the Licensee Indemnified Parties as a result of Licensee's or its Affiliates' performing their obligations under this Agreement or as the result of Manager's furnishing, dispensing or sale of liquor or its related liquor dispensing operations at the Premises under this Services Agreement, under its temporary liquor license or after the Liquor License is transferred to Manager, except to the extent Indemnified Claims arise from the breach of this Agreement by Licensee or the gross negligence, bad faith or willful misconduct of Licensee. The obligations of Manager under this Section 7(a) shall survive the termination of this Agreement.

(b) IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANOTHER FOR INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR PUNITIVE

DAMAGES (INCLUDING BUT NOT LIMITED TO LOST REVENUE, PROFITS OR OTHER BUSINESS LOSSES OR OPPORTUNITIES), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

(c) **Liability Insurance.** From the Effective Date until two (2) year after the Liquor License is transferred to Manager, Manager shall procure at Manager's sole cost and expense and keep in full force and effect, commercial general liability insurance and excess/umbrella liability insurance which includes liquor liability coverage, naming Licensee Indemnified Parties and such other parties as Licensee may specify as additional insureds, insuring against any and all claims, actions, costs, damages, liabilities, losses, and expenses of any kind (including, without limitation, reasonable, attorneys' fees, consultant fees and costs) incurred or suffered by any one or more of the Licensee Indemnified Parties as a result of Licensee's or its Affiliates' performing their obligations under this Agreement or as the result of Manager's furnishing, dispensing or sale of liquor or its related liquor dispensing operations at the Premises under this Services Agreement, under its temporary liquor license or after the Liquor License is transferred to Manager. Such insurance shall be written by a company authorized to do business in the State of Hawaii with an A.M. Best rating of not less than A VII. Coverage shall be on an "occurrence" type policy form for bodily injury and property damage with limits not less than:

Commercial General Liability

Each Occurrence: \$1,000,000
Personal & Advertising Injury: \$1,000,000
Products-Completed Operations Aggregate: \$2,000,000
General Aggregate: \$2,000,000
Fire Legal Liability: \$100,000
Medical Expense (any one person): \$5,000

Excess/Umbrella Liability

Each Occurrence: \$25,000,000
Aggregate: \$25,000,000

Such insurance policies will be in form and substance acceptable to Licensee and shall provide that it cannot be canceled or modified without at least sixty (60) days' prior written notice to Licensee and shall provide for thirty (30) days' prior written notice to Licensee if not renewed at the expiration. All insurers shall waive any right of subrogation in favor of the Licensee Indemnified Parties and such insurance required shall be primary and not seek contribution from the Licensee Indemnified Parties or any other insurance on which the Licensee Indemnified Parties are a named insured. A current certificate that such policy is in effect and names the Licensee Indemnified Parties as additional insureds shall be deposited with Licensee on the Effective Date and shall be kept current at all times. The obligations of Manager under this Section 7(a) shall survive the termination of this Agreement.

8. **Attorney's Fees.** If either party shall be in default or otherwise fail to observe or perform the terms, conditions and covenants herein contained, the non-defaulting and/or non-breaching party shall have the right to make a demand or otherwise protect or enforce its rights

herein, and the defaulting and/or breaching party hereby expressly agrees to pay legal costs and expenses so incurred by the non-defaulting and/or non-breaching party including, but not limited to, court costs and reasonable attorney's fees.

9. **Liquor License Violations.** Any notice of liquor violations to be served upon the business during the term of this Agreement shall be served upon Licensee. Manager shall, at its sole costs and expense, be responsible for (with the cooperation of Licensee) defending against any liquor violations served upon Licensee that relates to conduct that occurred during the term of this Agreement and paying any fines imposed by the Commission, and Manager shall indemnify, hold harmless and defend Licensee against any such liability, cost or expense, including without limitation reasonable attorney's fees and expense.

10. **Notices.** Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally or shall be deemed to be delivered when deposited in the United States mail or other courier services, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address indicated above, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith. Personal delivery means handing the notice to the other party.

11. **Complete Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may not be amended, altered, or modified except in writing signed by both of the parties.

12. **Waiver.** No consent or waiver, express or implied, by a party or of any breach or default by the other party in the performance of such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations by such other party hereunder. Failure on the part of a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance shall not limit or waive the necessity to obtain such party's consent in the future instance.

13. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying the intent of this Agreement, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid or enforceable.

14. **Binding Effect.** Except as otherwise provided herein to the contrary, this Agreement shall be binding upon and is for the benefit of the parties hereto and their permitted successors, transferees, and assigns.

15. **Remedies in Equity.** The rights and remedies of either of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirm that damages at law will be an inadequate remedy for a breach or threatened breach of this Agreement and agree that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any rights at law or by statute or otherwise of any breach of any provision hereof, if being the intention by this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as law or otherwise.

16. **Honolulu Liquor Commission Approval.** The parties acknowledge that this Agreement must be administratively approved by the Commission and Manager (with the cooperation of Licensee) shall be responsible for obtaining the Commission's approval.

17. **Amendments; Interpretation.**

(a) The terms of this Agreement are contractual and not mere recital. There shall be no amendment to this Agreement unless set forth in writing.

(b) For the purposes of construing the intent of this Agreement, neither party shall be considered to have drafted this Agreement.

18. **Disclaimer.** It is hereby expressly understood and specifically agreed by the parties hereto that this Agreement is not, and should not be construed, in any manner, shape or form as a joint venture, general partnership, limited partnership, any other business enterprise or as an employment contract by and between them. This Agreement further shall not be construed as a lease agreement but as an independent contractor agreement under which Licensee provides the Services.

19. **Construction.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Sections and Subsections are for convenience only, and neither limit nor amplify the provisions of this Agreement itself. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matter set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

20. **Force Majeure.** If either of the parties hereto is delayed or prevented from fulfilling any obligations under this Agreement by any cause beyond the reasonable control of such party, including but not limited to, act of God, act or omission of civil or military authorities or a nation or state, fire, strike, flood, riot, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities, then said party shall not be liable under this Agreement for said delay or failure, except that the obligations of Manager under Sections 7(a) and 7(c) hereinabove is specifically excluded from this Section and those obligations shall remain in full force and effect notwithstanding any Force Majeure event.


21. **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and which shall together constitute one and the same document, binding all the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. For all purposes, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document. Electronic signatures shall be binding and effective for all purposes and shall be treated the same as original signatures.

-- The remainder of this page is intentionally left blank; the next page is the signature page --

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the Effective Date.

"Licensee"

WAIKIKI SAND VILLA HOTEL, INC.,
a Hawaii corporation

By: 
Name: Hiroki Shuto
Its: President

"Manager"

2375 ALA WAI PROPERTY LLC,
a Delaware limited liability company

By Its Sole Member:

2375 ALA WAI HOLDING LLC,
a Delaware limited liability company


By: 
Name: Phil Hospod
Title: Authorized Signatory

EXHIBIT A-2

**March 18, 2021 Honolulu Liquor Commission
Approval of Services Agreement**

#21-22929
Reserved for Office Use (Date/Time Stamp)

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU
711 KAPIOLANI BOULEVARD, SUITE 600, HONOLULU, HAWAII 96813-5249
PHONE (808) 768-7300 • EMAIL HLC@honolulu.gov
INTERNET ADDRESS: www.honolulu.gov/liq

MANAGEMENT OR OPERATING AGREEMENT

Rule 3-82-41.4

☒ New

☐ Revised

☐ Cancelled

Notify the Liquor Commission in writing, of any changes that occur to your Management or Operating Agreement.

License #: L0035

Licensee Name: WAIKIKI SAND VILLA HOTEL, INC.

Trade Name / DBA: WAIKIKI SAND VILLA HOTEL

Licensee Contact Name: HIROKI SHUTO Title: PRESIDENT

Bus. #: 808-294-0845 Mobile #: 808-294-0845 Email: shuto@wsvhotel.com

Name of Manager, Operator or Entity: 2375 ALA WAI PROPERTY LLC

Contact Name: CHRISTINA OHIRA Title: AUTHORIZED AGENT

Bus. #: 808-447-5336 Mobile #: 5808-349-9635 Email: COHIRA@STARNLAW.COM

☒ Attached Management or Operating Agreement

Rule §3-82-41.4(b)

- (1) The agreement is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain in possession and control of the licensed premises.
- (2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.
- (3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

☐ Attached Management or Operating Agreement

If Liquor License will be transferred to new ownership, provide expected date of transfer of the license to the new Manager, Operator or Entity:

Expected Date of Transfer

(Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license)

By signing below, I hereby agree and certify all statements above to be true and correct:

HI. Shuto
SIGNATURE Licensee (Owner)

3/15/2021

DATE

HIROKI SHUTO

PRINT Licensee (Owner)

PRESIDENT

TITLE

For HLC Office Use Only

HLC STAFF Initial: 3/18/21

LCIS ENTRY Date: 5

LIQ-LIC-156

☒ Accepted ☐ Denied

Anna Hui 3/16/21
Franklin "Don" Pacarro, Jr. Date
Administrator Rev. 1/29/21

EXHIBIT B

Summary of Owner's Consent and Approval Rights, Authority, and Responsibilities under Management Services Agreement between 2375 Ala Wai Property LLC ("Owner") and OLS Hotels & Resorts, LLC, dba Springboard Hospitality ("Operator")

Section 1.1

- The Agreement is restricted to permitting Operator to manage and operate the Hotel on behalf of Owner, and Owner shall remain in possession and control of the Hotel at all times.

Section 2.7 – Operating Expenses

- Requires Owner's prior written consent for Operating Expenses that are not set forth in the Annual Budget.

Section 3.1.B – Hotel Executive Team

- Gives Owner the right to reasonably approve the candidates hired or replaced for the positions of General Manager, Controller, Director of Food and Beverage, Executive Chef, Director of Sales and Chief Engineer, as well as any culture and brand positions (limitation on Operator's right under Section 3.1.A to select the General Manager).

Section 3.1.H – Accounts

- The books of account and all other records relating to or reflecting the Hotel shall be kept at the Hotel and shall be available to Owner and its agents or representatives at all reasonable times for examination, audit, inspection, and copying.
- All books of account and other records of the Hotel, including, without limitation, guest records and front office records shall at all times be the property of Owner, which shall be surrendered to Owner upon any termination of this Agreement.

Section 3.1.I – Reports

- Requires Operator to provide monthly reports to Owner about the Hotel, including:
 - financial statements;
 - a summary of key Hotel operating activities and performance;
 - the amount of Base Management Fee earned and paid/accrued for the fiscal period then ended;
 - a comparison of the results of operations and capital expenditures for the Hotel for the fiscal period then ended with the Operating Budget and Capital Budget, respectively, and with the comparable period in the prior Fiscal Year;
 - a Smith Travel Research report for the Competitive Set;
 - a comp rooms and food and beverage list (and the reason therefor);
 - cash flow forecasts; and
 - any other information reasonably requested by Owner or its lender.
- Requires Operator to provide annual reports to Owner about the Hotel.
- Requires Operator to promptly (within 24 hours) notify Owner of:

- any health and safety incident involving the death or serious injury of an employee, contractor, visitor, guest or other person that occurs on hotel premises or as a result of work-related activities;
- any fire, explosion, or significant property damage that requires a prolonged response from the police, fire department, ambulance service, or other emergency service provider;
- any major or material environmental incident or series of incidents that resulted in significant environmental impact on the hotel;
- commencement of any legal action or enforcement action or legal notice including civil or criminal allegations or complaints against the Owner, Operator (as it relates to the hotel) or relating to the operation of the Hotel;
- any credible incidents or allegations related to human exploitation including human trafficking, modern slavery, child labor and prostitution;
- material or sustained community or non-governmental organization
- protest against the Owner or Operator; or
- suspended operations or project delays due to regulatory, investor, or community actions.
- Requires Operator to provide to Owner a quarterly report describing WHSE incidents, lost time injuries and hours worked and a semi-annual WHSE compliance survey and attestation.

Section 3.1.J(1) – Operating Budget

- Requires Operator to submit a proposed operating budget to the Owner for the Owner's approval at least 75 days before the beginning of each fiscal year, including:
 - Estimated profit and loss statement
 - Narrative description of Operator's plans and goals
 - Sales and marketing plan
 - Schedules of:
 - room rates;
 - occupancy levels;
 - gratuitous accommodations and services;
 - sources of business;
 - sources and amounts of other income;
 - all Operating Expenses to be incurred in connection with the Hotel, including as separate line items amounts budgeted for special services, central office services, if any, repairs and maintenance, and expenditures for advertising and business promotions;
 - other fixed costs and expenses to be incurred in connection with the Hotel, including all items included in taxes, rent, insurance, mortgage payments and additions to reserves; and
 - cash available for disbursement.

Section 3.1.J(4) – Capital Budget

- Requires Operator to submit a proposed budget of quarterly capital expenditures for the ensuing Fiscal Year, including estimates for:
 - expenditures for operating equipment

- expenditures for furnishings and equipment, and
- expenditures for revisions, alterations,
- replacements, and additions and improvements in and to the Hotel and the furnishings and equipment.

Section 3.1.J(5) – Ongoing Review of Budgets

- Owner's representative and Operator shall, at Owner's option, meet (in person or telephonically) monthly for the purpose of reviewing Hotel profit and loss statements, Operator's performance, capital expenditures, forecasts of cash available for disbursement for the balance of the current Fiscal Year, and making any revisions to the Operating Budget or Capital Budget to which Owner and Operator jointly agree in order to maintain or improve the departmental profits and margins as originally budgeted.

Section 3.2 – Limitations on Operator's Authority

- Operator shall not, without the prior consent of Owner:
 - Enter into any contract, lease, license, concession agreement or other contract for the Hotel:
 - which has a term of greater than one year, including renewals, unless the contract is terminable at any time without cause upon not more than 30 days' prior notice, and without cost or penalty; or
 - which binds Owner to aggregate payments per year exceeding \$25,000; or
 - is for space at the Hotel in excess of 500 square feet (unless such contract, lease, license, concession agreement is specifically contemplated by and consistent with the Operating Budget and is otherwise on reasonable market terms); or
 - with an Affiliate of Operator.
 - Institute, prosecute, defend, or settle any pending or threatened legal action or proceeding involving a claim by or against Owner (except to dispossess guests and not in excess of \$25,000).
 - Enter into collective bargaining agreements with labor organizations in connection with the Hotel.
 - Engage attorneys, auditors, or consultants to audit or review the financial statements for the ownership and operation of the Hotel.
 - Incur debts other than trade payables and expenses authorized in the Operating Budget.
 - Make capital expenditures that are not expressly authorized by the Capital Budget.
 - Take any action on Owner's behalf that is outside the normal operation of the Hotel.
 - Make any material change in the structure, general appearance, or nature of the Hotel.
 - Acquire land or an interest therein relating to the Hotel.
 - Acquire capital assets, except as approved in the Annual Budget.
 - Purchase any single item or group of the same items of FF&F that requires aggregate annual payments in excess of \$20,000.
 - Finance, refinance, or mortgage any portion of the Hotel or the revenue due to Owner therefrom.
 - Sell, transfer, pledge, or place a lien on the Hotel or any portion thereof.

- Execute any design or construction related contract.
- Provide complimentary rooms or services for non-business-related purposes that relate to the Hotel.
- Consent to or participate in any condemnation proceeding.
- Perform any construction, alteration, change, renovation, refurbishing, improvement or rebuilding of or addition to the Hotel or any part thereof, except as provided for in the Annual Budget.

Section 3.3 – Owner Contact with Hotel General Manager, Executive Team, Employees

- Owner may directly contact the Hotel’s General Manager or any other member of the Hotel’s executive committee and engage in ordinary course discussion with other Hotel employees while Owner’s representatives are on-site at the Hotel.

Section 5.1 – Owner Provides Working Capital for Hotel

- Owner is responsible for providing the working capital for the Hotel.

Section 5.2 – Funds from Operation of Hotel Belong to Owner

- Operator may not mingle the Operator’s funds with any funds received by the Operator in the operation of the Hotel. Instead, those funds shall be deposited promptly in a bank account or accounts selected by Owner in Owner’s name with Operator as trustee of such account(s).

Section 7.2 – No Structural Alterations, Improvements, or Repairs

- Prohibits Operator from making any structural alterations, improvements, or repairs to the Hotel without the Owner’s prior written consent.

Section 7.2 – Owner’s Right to Contest Laws

- Owner shall at all times possess the right to contest any laws, ordinances, rules, or regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer with applicable jurisdiction purporting to require any such alterations, additions, improvements, or repairs be made and, if Owner elects to contest such requirement, Operator shall, upon written notice from Owner of Owner’s intent to contest, postpone compliance pending the determination of such contest if so permitted by law.

Section 7.3 – Cost of Structural Alterations, Improvements, or Repairs Borne by Owner

- The cost of all structural repairs or changes to the Hotel carried out in accordance with Section 7.2 (which shall be of a capital or non-recurrent nature) shall be borne by Owner and shall not be treated as an Operating Expense (and shall not reduce Net Operating Income).

Section 9.1 – Wayfinder Brand

- Requires the Hotel to be conducted, operated, and maintained in compliance with the standards of the Wayfinder brand (developed by Owner’s affiliate).

Section 10.2 – Owner’s Right to Terminate MSA

- Owner has certain rights to terminate the MSA.
 - Operator’s monetary breach (20 days to cure after written notice).
 - Operator’s non-monetary breach (30 / 60 days to cure after written notice).
 - If Operator applies for or consents to the appointment of a receiver or trustee for the benefit of creditors, becomes insolvent, or voluntarily or involuntarily has federal or state bankruptcy proceedings instituted against it.
 - Any time 24 months after the Commencement Date (*i.e.*, March 23, 2023), with at least 65 days’ notice to Operator.
 - Upon Owner’s sale of the Property to an unrelated third party, with at least 65 days’ notice to Operator.
 - At any time within 24 months after the Commencement Date, with an early termination penalty equal to the Management Fees for the remainder of the 24 months. No early termination penalty upon sale of Hotel if new owner continues to use Operator’s services.

Section 10.5.A – Procedures Upon Termination of MSA

- At termination, all receivables of the Hotel outstanding as of the effective date of termination, including, without limitation, guest ledger receivables, shall continue to be the property of Owner, and Owner (and not Operator) shall be responsible for the collection thereof.
- At termination, Owner (and not Operator) shall be responsible for all funding liabilities of the Hotel and payment of Operating Expenses.

Section 10.5.B, C – Procedures Upon Termination of MSA

- If the MSA is terminated, Operator shall:
 - assign Operator shall assign and transfer to Owner or Owner’s designee all of Operator’s right, title and interest in and to all licenses and permits, if any, with respect to the Hotel, and reasonably cooperate with Owner and any successor operator in obtaining new licenses or permits;
 - peacefully vacate and surrender the Hotel to Owner and deliver to owner any operating supplies and equipment, keys, locks and safe combinations, reservation lists, ledgers, bank statements for the Hotel Accounts, accounting books, etc.;
 - cooperate in all reasonable ways in the transition of the operation and management of the Hotel to Owner or Owner’s new operator and to cause an orderly and expeditious transition of management functions, with as little hindrance to the operation of the Hotel as reasonably practicable;
 - notify in writing all then current suppliers of goods or services to the Hotel of the impending change in management of the Hotel and assign to Owner all service and supply contracts and other agreements for the Hotel which Operator made in its own name in accordance with the MSA.

Section 11.1 – Insurance Policies for Operations

- Requires Operator to procure and maintain insurance policies with the written approval of Owner, including:
 - worker’s compensation

- employer liability
- professional liability
- general liability
- liquor license liability
- business automobile
- garagekeepers
- spa, pollution liability, etc.
- At Owner's option, all or any of the foregoing insurance coverages may be provided by a blanket or other policies that are acceptable to Operator or Owner in either party's reasonable discretion.

Section 11.2 – Insurance Policies for Operations

- All insurance policies shall be held in the name of Operator but shall name Owner as a Named Insured.
- Owner has the right to change the terms and conditions of any coverages or to add additional coverages by written notice to Operator.

Section 11.2 – Insurance Policies for Hotel (Property)

- Owner supplies insurance on the Hotel and its contents against all risk of physical loss or damage, including business interruption.

Section 11.7 – Reports and Claims to Insurers

- Operator must prepare reports of all accidents and claims for damage for Owner's approval.

Section 14.11 – Food and Beverage Service

- Operator shall initially manage and operate the restaurant and other food and beverage outlets at the Hotel, which includes the provision of room service and of all catering and banquet functions at the Hotel ("**F&B Outlets**").
- However, at Owner's election at any time, Owner may retain a third-party operator to operate (whether under a management agreement, lease agreement or otherwise) the F&B Outlets as determined by Owner in its sole discretion, in which case Operator shall administer the performance of the F&B Outlets provider, to the extent directed by Owner, and coordinate Hotel operations with the operations of the F&B Outlet provider.

Section 14.13 – Owner's Intellectual Property

- Owner shall have the right to inspect and approve all uses of Owner's IP by Operator, including publicity and advertising, in connection with this Agreement.
- All goodwill which may arise from the use of Owner's IP shall remain the sole and exclusive property of the Owner and shall inure to the sole benefit of Owner.

Section 14.15 – Hotel Guest Information

- Operator shall not be permitted to use the Hotel Guest Information for any purpose other than in connection with the promotion and operation of the Hotel without Owner's prior approval.

Section 14.16 – Hotel Name

- The Hotel shall be known and designated by the name Waikiki Sand Villa Hotel until completion of Owner's initial renovations, at which point the Hotel shall be known and designated by the name Wayfinder Waikiki or such other name as determined by Owner.

Section 14.18 – Meetings

- Operator agrees to meet with Owner from time to time upon Owner's request to review the operations of the Hotel and any other matters of concern.

Section 14.19 – No Material Changes to Hotel Operations (COVID-19)

- Operator is responsible for implementing safety precautions and protocols for COVID-19, but no material changes to Hotel operations (including, without limitation, closures of the Hotel, guest rooms and/or amenities; reduction in operating hours or staffing; or changes to the intended Hotel occupancy/usage, etc.) will be implemented without Owner's prior consent in its sole discretion.